

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

UNITED STATES OF AMERICA)
)
) Case No. 2:17CR00015-003
)
v.) OPINION AND ORDER
)
LESLIE ANN CLASBY,) By: James P. Jones
) United States District Judge
)
Defendant.)

Leslie Ann Clasby, Pro Se Defendant.

Defendant Leslie Ann Clasby, a federal inmate proceeding pro se, has filed a miscellaneous motion seeking a reduced sentence pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 794 to the United States Sentencing Guidelines Manual. I intend to address the motion as one to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255.

Under *Castro v. United States*, 540 U.S. 375 (2003), courts must notify pro se litigants when they intend to recharacterize a pleading as a § 2255 motion and provide them the opportunity to withdraw the motion or amend it so that it contains all the § 2255 claims they believe they have. 540 U.S. at 383. Courts must also warn inmates of the consequences of recharacterizing their pleading as a § 2255 motion. *Id.*

Once a litigant has filed one § 2255 motion, he or she must apply for certification from the United States Court of Appeals for the Fourth Circuit in order to file a second or subsequent § 2255 motion as to the same conviction or sentence. 28 U.S.C. § 2255(h). In light of this limitation on filing successive § 2255 motions, I advise Clasby that if she elects to have the court address the present motion as a § 2255 motion, she should include any other claim that she believes causes her conviction or sentence to be invalid or unconstitutional. However, if she has additional grounds and fails to amend, such claims raised in a later § 2255 motion would be dismissed as successive unless she first received certification from the United States Court of Appeals for the Fourth Circuit to file a successive motion.

Rule 2(b) of the Rules Governing § 2255 Proceedings requires a motion to vacate under § 2255 to be signed under penalty of perjury and to substantially follow the standard form.

Accordingly, it is hereby **ORDERED** as follows:

1. The Motion to Reduce Sentence, ECF No. 213, is CONDITIONALLY FILED as a § 2255 motion and Clasby is hereby DIRECTED to submit to the court within 21 days from the date of entry of this Order either (a) an objection to the court's intention to address the Motion to Reduce Sentence as one arising under § 2255, or (b) a completed § 2255 motion form (ENCLOSED),

signed under penalty of perjury, to have the court consider the claims under § 2255. Clasby's failure to comply with this Order will result in the dismissal of the conditionally filed § 2255 action without prejudice.

ENTER: April 30, 2019

/s/ James P. Jones
United States District Judge